

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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CURTIS NEVA,

Civil No. 08-546 (MJD/AJB)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

V.A. HOSPITAL,

Defendant.

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This matter is presently before the undersigned Magistrate Judge for Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1. For the reasons discussed below, it is recommended that this action be dismissed without prejudice.

Plaintiff commenced this action on February 27, 2008, by filing a collection of papers that the Clerk's Office construed to be a civil complaint. (Docket No. 1.) Plaintiff did not tender the \$350 filing fee with his complaint, (see 28 U.S.C. § 1914(a)), but instead filed an application seeking leave to proceed in forma pauperis, ("IFP"). (Docket No. 2.)

This Court previously reviewed Plaintiff's "complaint" and IFP application, and concluded that he could not be granted IFP status, because his "complaint" was grossly defective, and failed to state an actionable claim for relief. Therefore, the Court entered an order on March 4, 2008, (Docket No. 4), advising Plaintiff that his case could not proceed unless he filed an amended complaint, stating an actionable claim for relief, by no later than April 1, 2008. That order expressly advised Plaintiff that if he did not file a viable amended complaint by the prescribed deadline, he would be deemed to have abandoned this action, and the Court would recommend that the case be dismissed without prejudice.

Plaintiff later asked for an extension of the deadline for filing an amended complaint, and that request was granted. (See Order dated March 25, 2008; [Docket No. 7].)

However, the Court has just recently received a letter from Plaintiff, dated April 21, 2008, (Docket No. 9), in which he asks the Court to “dismiss my case.” Because no Defendant has filed any answer or other response to Plaintiff’s pleading in this matter, Plaintiff is entitled to voluntarily dismiss this action, as a matter of course, pursuant to Fed. R. Civ. P. 41(a). Therefore, Plaintiff’s letter of April 21, 2008, will be construed to be a request for voluntary dismissal pursuant to Rule 41(a), and the Court will recommend that such request be granted, and that this action be summarily dismissed without prejudice. The Court will further recommend that Plaintiff’s pending IFP application be denied as moot.<sup>1</sup>

#### RECOMMENDATION

Based upon the above, and upon all of the files, records and proceedings herein,

IT IS HEREBY RECOMMENDED that:

1. Plaintiff’s application to proceed in forma pauperis, (Docket No. 2), be DENIED AS MOOT;

2. Plaintiff’s letter dated April 21, 2008, (Docket No. 9), be construed as a request for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a), and that such request be GRANTED; and

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<sup>1</sup> Plaintiff apparently is concerned that he will remain liable for the \$350 filing fee for this action after the case is dismissed. That concern, however, is unfounded. After this case has been dismissed, Plaintiff will have no further responsibility for paying any filing fee for the case.

3. This action be summarily DISMISSED WITHOUT PREJUDICE pursuant to Fed. R. Civ. P. 41(a).

Dated: April 24, 2008

s/ Arthur J. Boylan  
ARTHUR J. BOYLAN  
United States Magistrate Judge

Pursuant to Local Rule 72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before May 8, 2008.